IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal No. 66 of 1993

Reserved on : 26 .10.2007

Date of Decision: November 8th ,2007

State of Himachal Pradesh .…….Appellant

Versus

Jeetu alias Ranjit and another. ……. Respondents

Coram:

The Hon'ble Mr. Justice Surjit Singh.J.

The Hon'ble Mr. Justice Surinder Singh,J.

Whether approved for reporting ?[1] *Yes.*

For the appellant	**:**	**Mr. Som Dutt Vasudeva, Addl. Advocate General with Mr.D. S. Nainta,Dy. Advocate General.**
For the Respondents	**:**	**Mr. Vinay Thakur, Advocate, vice Mr. Jagdish Vats, Advocate.**

Surinder Singh, J.

Head and gone through the record.

The respondents were put on trial and acquitted for the offences under Sections 302, 307 of the Indian Penal Code and 25 of the Arms Act, by the trial court in Sessions Case No.8/92, decided on 25.7.1992, for allegedly committing the murder of Shri Vipan Kumar and attempt to cause murder of Shri Narinder Singh by stabbing with knife having 10" long blade.

Briefly put, the prosecution case has been that on 12.3.1991, at about 12.00 noon, there was an auction of

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? Yes.***

Liquor Vends at Kangra. When the auction was over, Baldev Singh (PW), Bhawan Chand, Narinder Singh (injured), Milap Chand, Raman Kumar Dogra and few other persons, who had participated in the auction went to “Preet Hotel” for their lunch, which was hosted by Sardar Surjeet Singh.

Around 3.00 p.m., after finishing their lunch, when the aforesaid persons came out from the hotel, some localites alleged that Vipan Kumar (deceased) had thrown a bottle from the hotel on the road. Said Vipan Kumar, with 2/3 persons went towards Ujjain side. Baldev (PW2) was pacifying the local boys, in the meantime his partner Bhawan Chand informed him that a quarrel had taken place at Ujjain and requested him to accompany him to the spot. On reaching the spot, they saw Jeetu @ Ranjeet respondent rotating a chain in his hand. Baldev (PW) stopped a boy and requested him not to quarrel. In the meanwhile, a shot was fired by a person, who was later identified as Penu Ram, respondent.

Vipin Kumar (deceased) ran towards Penu aforesaid and grappled with him who was joined by two more persons. Penu Ram threw his revolver in a direction where local boys were standing, but Vipin Kumar captured the revolver and handed over to Baldev (PW) when he was putting the revolver inside his shirt, Jeetu respondent stabbed Vipin Kumar with a knife (Ex.P1). When Narinder Singh (PW) had tried to intervene, he was also hit by some object and received a fracture of his arm, besides other simple injuries.

Vipin Kumar was immediately removed to the hospital, but he could not survive and died within 20 minutes during his medical examination at 4.10 p.m. Dr. Kumbh Karni (PW1) had found that Vipin Kumar was gasping. Pulse and B.P. was not recordable, the chest air entry had decreased and he noticed following injury on his chest:

> **"There was incised wound with sharp, inverted and clear edges. The wound was present over the anterior aspect of right chest (2nd to 3rd intercostal space) near the lateral aspect of sternal cartilage. The probe was entering the wound around 8" deep. Fresh blood was oozing out of the wound. There was surgical emphysema also. The underlying muscle fibres and lung parenchyma are visible to the naked eye. On pressing the right side of chest, gush of blood was coming out of the wound."**

No other injury was seen on the body. Vipin Kumar had a cardio respiratory arrest, therefore, he was given Ambu bag treatment, but he could not survive and was declared dead. The doctor issued the Medico Legal Certificate Ext.PW1/A.

On 12.3.1989, Narinder Singh was also medically examined by PW1 aforesaid. He found the following injuries on his person:

1. **There was incised wound measuring 1 X 1 1/2" placed horizontally on the lateral aspect of the arm (middle) margins were sharp, on touching, the margins were bleeding, edge of the wound was slightly inverted. Probe was found 1" deep.**
2. **The movement of left shoulder and elbow joints were restricted and tender on touch. The arm was swollen. X-Ray was advised of left shoulder A.P. and lateral view which was done. Vide X-Ray No.584/12.3.91. X-Ray of left humerus showed fracture mid-shaft of humerus.**

Narinder Singh injured was referred to Zonal Hospital, Dharamshala, on the same day for treatment. His Medico Legal certificate is Ext.PW1/B. The doctor had opined injury No.2 above as grievous having been caused by a sharp-edged weapon.

Dr. Kumb Karni (PW1) had informed the police. It reached immediately in the hospital and recorded the statement Ext.PW2/A of Baldev Singh (PW2) at 4.45 p.m., under Section 154 of the Code of Criminal Procedure, on the basis of which, FIR Ext.PW10/A was formally registered under the aforesaid sections.

The autopsy of the dead body of Vipin Kumar was got done by police. The Post-mortem report is Ext.PW14/A. In the opinion of the Doctors, he had died due to the penetrating injury to the right lung resulting in haemorrhage and consequent shock. The injury was found sufficient to cause death in the ordinary course.

Baldev Singh (PW2) had handed over the revolver Alongwith one spent and six live cartridges vide memo Ext.PW2/B, which were sealed and sent for the Ballistic Expert opinion. According to the report Ex.PX, on examination of the exhibits it could not be definitely ascertained that the spent cartridge was fired from the said revolver for want of sufficient material.

On 12.3.1991, yellow sweater which was alleged to have been worn by Jeetu respondent on the day of the alleged

incident, had contained blood stains, was also taken into possession from him, at the time of his arrest. It was sealed with seal `P' and was sent for forensic examination, vide report Ex.PY it contained human blood of `B' group which tallied with the blood group of the deceased.

On 15.3.1991, pursuant to the disclosure statement of Jeetu respondent got recovered a chain vide memo Ex.PW8/B.

The police also took the sketch of knife Ex.P1 on the paper Ex.PW8/C. The site plan Ex.PW5/B was also prepared.

After completing the investigation, the challan was prepared and presented in the court under the aforesaid sections against the respondent.

The respondents put on trial and were charge-sheeted under the aforesaid sections. They pleaded not guilty and claimed trial.

The prosecution examined its witnesses to prove the charges. The respondents were also examined under section 313 of the Code of Criminal Procedure. The defence of Pennu alias Vijay Kumar respondent was that he was carrying the cash of Rs.50,000/- to the factory located nearer to the place of occurrence. He was instructed to take his licensed revolver for his protection. When he reached the spot of alleged incident, he saw that 5/6 persons were beating the persons whosoever came on their way. Out of them 2/3 persons advanced towards him in an aggressive mood. In order to

scare them off and to save himself, he fired a shot in the air from his licensed revolver. But instead of dispersing they attacked him. He got frightened and threw his revolver, so that it did not come in their hands and ran away towards his shop. Later, he came to know that police had registered a case against him and applied for his bail.

Jeetu alias Ranjeet accused alleged his false implication.

The trial court called up the respondents to enter into their defence but no defence was led.

After hearing the learned counsel and upon going through the evidence on record, the learned trial court had acquitted the respondents.

We have heard and gone through the record in every meticulous details.

As a matter of fact, the police was informed about the incident by Dr. Kumb Karni (PW1). They visited the hospital. By that time, Vipin Kumar injured had died. Baldev Singh (PW2) gave his statement Ext.PW2/A under Section 154 of the Code of Criminal Procedure, at 4.45 p.m. The alleged incident had taken place, about 400 meters away towards Ujjain side from “Preet Hotel”, where the complainant party had taken lunch. There, Vipin Kumar (deceased) was caught hold by the local boys. The complainant has mentioned in his statement that Jeetu respondent was wielding a chain in his hand. Pennu respondent had fired a shot in the air and threw the revolver in

a “Nali”, suddenly Jeetu respondent wearing a yellow sweater appeared and stabbed Vipin Kumar with a knife. Both the above statements appeared to be contradictory from each other for the reason when Jeetu was already there on the spot wielding a chain, then how he had suddenly appeared in yellow sweater with a knife and stabbed Vipin Kumar. When the complainant was examined in the court, he deposed that he was informed about the quarrel by Bhawan Chand (PW), who requested him to accompany him to the spot. On reaching there he saw that about 150 boys from both the sides were fighting with each other. In that situation, it was not humanly possible for the witness to notice and describe the role having been played by each of the respondents herein, more specifically by Jeetu respondent. Further as stated by him, he was not knowing the names of respondents at the time when he had made the statement to the police, but only described about their physical characters (Hulia), then how the name of Jeetu appeared in his statement Ext.PA, recorded under Section 154 of the Code of Criminal Procedure has been explained. No identification parade was got done when the respondents were arrested. According to PW2 above, many persons from the side of the deceased had come to the hospital, who had identified and disclosed the names of the accused persons but no such reference is there in Ext.PW2/A. Therefore, his testimony regarding the identification and the

role played by the respondents, as alleged becomes quite doubtful.

The another important fact which is worth mentioning here, is that on the basis of statement Ext.PW2/A (supra) the FIR Ext.PW10/A was formally registered, on the same day at 4.50 p.m. The police station, Kangra is shown at a distance of 1.00 k.m. from the place of incident and the hospital where statement Ext.PW2/A was recorded in the hospital at 3.30 p.m., located within the town and nearer to the police station. The residence and the court of Judicial Magistrate is also situated within the town, but it took 50 minutes to cover the distance of one kilo meter, to register the FIR and 40 minutes to reach the concerned Magistrate after its registration, which goes to show that the names of the assailants by other persons who had come to the hospital, might have mentioned the names of the respondents, more specifically when the complainant has stated that he did not know the names of the respondents but had only disclosed their identity by describing their stature and other physical characters. In our opinion, such a circumstance affects the probabilities of the case, in judging the veracity of the prosecution case.

The another witness is Narinder Singh (PW3), an injured, a close relative of Baldev Singh (PW2). According to him, he could not identify the boy who had fired the shot in the air and threw the revolver in a “Nali”. It stands admitted by him in the court that about 30/40 local boys were involved in the

fight and all were strangers to him, thus, it was not possible to identify any of them. He further stated that a boy, wearing yellow sweater had given a knife blow to Vipin Kumar on his chest. When he (PW2) tried to intervene, he also sustained the injuries. This witness was declared hostile but when he was confronted with his earlier statement recorded by the police, he disowned it and deposed that it was not correctly recorded.

Bhawan Chand (PW4) was also examined as an eye witness of the alleged occurrence but he also did not support the prosecution case. According to him, he did not see anybody stabbing. In his cross-examination, he has stated that there were lot of boys fighting with each other and it was not possible to identify anyone. Raman Kumar (PW5) also backed out from his earlier version and the prosecution did not rely upon him.

In so far as the recovery of yellow sweater is concerned, according to PW6 Joginder Singh, the police had arrested Jeetu respondent, he was wearing the yellow sweater, it was blood stained. The police took it into possession vide memo Ext.PW2/E and it was sealed on the spot. In cross-examination, he had stated that no one had identified that the said accused was wearing the yellow sweater. It has also come in his evidence that the alleged incident had taken place in the afternoon on 12.3.91. Thus, the recovery of the sweater could not have been affected before the incident had taken place before noon i.e. at 11 p.m.

Further the seal which was used to seal the sweater was already in possession of Baldev Singh when the blood stained earth and grit were sealed on the spot on 12.3.91. Its memo Ext.PW2/C clearly mentions that after its use, it was handed over to PW Baldev Singh. But there is no document or evidence in any form that the said seal was again taken by the Investigating Officer from Baldev Singh to seal the said sweater, which makes the case of the prosecution further doubtful.

The another regrettable feature of the case, which creates another dent in its story is that in his statement Ext.PW2/A, Baldev Singh has stated that Vipin Kumar (deceased) took possession of the loaded revolver of Pennu respondent, which he further handed over to him, in the meantime Vipin Kumar was stabbed. He stopped the Van, put the injured persons in it and took them to the hospital. The revolver was taken into possession by the police vide memo Ext.PW2/B, the perusal of which shows that on unloading it **6** live and **1** fired cartridges were found, which is impossible because only **6** rounds/cartridges can be loaded in a revolver not **7.** Realizing this mistake the investigating officer PW15 Shri Pritam Singh Sub-Inspector has stated in the court that there were **five** live cartridges and **one** used in the revolver. His statement is contrary to the above document, prepared by him. Further the revolver and cartridges were sent for ballistic opinion. Its report Ext. PX do not categorically state in its

opinion that the spent cartridge was fired from the revolver in question.

Though it is unfortunate that a valuable life was eliminated from this planet for a song, but to convict a person in an offence, the evidence should be legal and worth inspiring confidence so as to avoid another casualty in the name of justice.

Thus the conclusion, which we have derived on the reappraisal of evidence, is that the prosecution evidence is discrepant, contradictory and unworthy of credence to convert the acquittal into conviction. Therefore, for the above reasons, the findings of acquittal recorded by the trial court are held to be correct, based upon its right appreciation and conclusions.

Accordingly the appeal is dismissed. Send down the record.

(Surjit Singh),J.

November 8th, 2007 (Surinder Singh),J.
(Pds)